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Dated: December 22, 2003 Signature:

Staci Harris
(Staci Harris)

1648
Docket No.: HO-P02074US0
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
George G. Brownlee et al.

Application No.: 09/674,892

Filed: May 6, 1999

For: ATTENUATED INFLUENZA VIRUSES

Confirmation No.: 5755

Art Unit: N/A

Examiner: Not Yet Assigned

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**RESPONSE TO RESTRICTION REQUIREMENT AND SECOND PRELIMINARY
AMENDMENT**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed September 24, 2003 (Paper No. 9), Applicants hereby provisionally elect Group 1, claims 1-25 and 28-47 for continued examination, with traverse.

Prior to examination on the merits, please amend the above-identified U.S. patent application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks begin on page 10 of this paper.

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REMARKS

Claims 1-40 and 48-56 are pending. Applicants have amended claims 1-4, 6, 8, 12-14, 17-19, 22-26, 28-32, 36, 38, and 40 and have canceled claims 41-47 without acquiescence and without prejudice. Claims 48-56 have been added. The definition of the mutated duplex region at the end of claim 1 has been amended to replace the reference to a "non-chimeric duplex region" with one or two base pair substitutions. Claims 13, 17, 18, 22, and 23 have also been amended for consistency with amended claim 1. Support for these amendments are found in the bottom paragraph on page 5 of the description. Claims 48-56 refer to specific protein-encoding genomic segments in addition to the NA-encoding genomic segment, support can be found on page 2, lines 1-10, pages 10-11. Applicants assert that no new matter has been added.

In response to the Restriction Requirement, Applicants have provisionally elected Group I, but in view of the re-definition of the mutated duplex region in claims 1, 13, 17, 18 and 22, Applicants assert that claims 1-40 and 48-56 have a unified inventive concept. Thus, in view of the amended claims, Applicants respectfully request that the Restriction Requirement be withdrawn.

Applicants are also confused as to the mention of Bergmann et al. on page 2, paragraph 6 of the Restriction Requirement. Applicants respectfully request clarification of the reason for the mention of Bergmann et al to ensure that Applicants properly address the potential or alleged issues related to Bergmann et al.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicants believe a fee for a two month extension of time is due with this response. The request for an extension of time accompanies this response in a separate paper.

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If additional fees are due, please charge our Deposit Account No. 06-2375, under Order No. 10025165 from which the undersigned is authorized to draw.

Dated: December 22, 2003

Respectfully submitted,

By 

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